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Supreme Court, U.S.
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No. 03-1696

IN THE

Supreme Court of the United States

EXXONMOBIL CORPORATION, EXXON CHEMICAL ARABIA, INC. AND MOBIL YANBU PETROCHEMICAL COMPANY, INC.,

Petitioners,

v.

SAUDI BASIC INDUSTRIES CORPORATION,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals properly dismissed Petitioners' federal action pursuant to the *Rooker-Feldman* doctrine when: (i) the federal action presents claims identical to ones already litigated to final judgment in the Delaware Superior Court; and (ii) Petitioners admit that the federal action is an "insurance policy" they will pursue only if they need to challenge a Delaware Supreme Court ruling reversing the Delaware Superior Court's final judgment for Petitioners.

CORPORATE DISCLOSURE STATEMENT

Respondent Saudi Basic Industries Corporation ("SABIC") is a Saudi Arabian corporation that is owned 70% by the Saudi government and 30% by private investors. SABIC has no parent corporations, and no publicly held corporation owns 10% or more of SABIC's stock.

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RESPONDENT'S BRIEF IN OPPOSITION

The *Rooker-Feldman* doctrine prohibits parties from seeking appellate review of a state-court judgment in a United States district court. Such review is incompatible with 28 U.S.C. § 1257's grant of exclusive federal appellate jurisdiction over state-court decisions to this Court. *See District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923). In this case, the Third Circuit held that the *Rooker-Feldman* doctrine bars Petitioners from maintaining a federal action when: (i) the federal action presents claims identical to ones already litigated to final judgment in the Delaware Superior Court; and (ii) Petitioners admit that their federal action is an "insurance policy" they will pursue only if they need to challenge a Delaware Supreme Court judgment reversing a Delaware Superior Court judgment in Petitioners' favor. The Third Circuit's application of the *Rooker-Feldman* doctrine to put a stop to Petitioners' admitted gamesmanship was entirely proper.

Petitioners attempt to concoct circuit splits by mischaracterizing both the nature and scope of the straightforward decision below. Moreover, even if this Court desires someday to elucidate whatever differences may exist between the *Rooker-Feldman* doctrine and res judicata principles, this case is a singularly poor vehicle for doing so. The decision below was narrow and factbound; Petitioners did not raise their question presented before the Third Circuit; and the result in this case is the same whether analyzed under the *Rooker-Feldman* doctrine or under res judicata principles. The petition should be denied.

STATEMENT OF THE CASE

This case involves allegations that Respondent, Saudi Basic Industries Corporation ("SABIC"), overcharged two SABIC-ExxonMobil joint ventures for certain technology used in the production of polyethylene. SABIC and Petitioners have already litigated the identical claims raised

in this federal court action to a $416.8 million final judgment for Petitioners in the Delaware Superior Court. SABIC has appealed that judgment to the Delaware Supreme Court, where briefing and oral argument are complete and a decision is pending. The Third Circuit dismissed Petitioners' federal action for lack of subject-matter jurisdiction pursuant to the *Rooker-Feldman* doctrine. (Pet. App. 6a, 8a) The Third Circuit reached this result because Petitioners admitted that their federal and Delaware suits raise "identical" claims, that their federal suit is "an insurance policy" to be pursued only if the Delaware Supreme Court reverses the $416.8 million judgment, and (if SABIC is unsuccessful at obtaining a reversal in Delaware) that they will dismiss their federal suit once SABIC has exhausted its appellate rights in Delaware.

1. In 1980, SABIC and two corporations that are now wholly-owned ExxonMobil subsidiaries formed two separate joint ventures to produce polyethylene in the Kingdom of Saudi Arabia. SABIC, which was then wholly-owned, and is now 70% owned, by the Saudi Arabian government, entered into these joint ventures pursuant to a Saudi government mandate to help industrialize the Kingdom by attracting capital investment and technological know-how from foreign corporations. The first of these two joint ventures – Yanpet – was formed on April 19, 1980 when SABIC and Mobil-Yanbu executed a joint-venture agreement. The other – Al-Jubail Petrochemical Co, or Kemya – was formed on April 26, 1980 when SABIC and Exxon Chemical Arabia executed a nearly identical joint-venture agreement.

2. In 1998, SABIC brought unrelated claims of patent misappropriation against ExxonMobil in the United States District Court for the District of New Jersey. In mid-2000, during discovery in that dispute, ExxonMobil first alleged that SABIC had breached a provision of the joint-venture agreements. ExxonMobil claimed that, starting in 1980, SABIC provided certain technology for the production of polyethylene to the joint ventures and charged them a margin

above SABIC's costs. ExxonMobil asserted that the joint-venture agreements required any technology provided by a partner to the joint ventures had to be provided at cost.

3. On July 24, 2000, SABIC filed a declaratory judgment action against the ExxonMobil subsidiaries in the Delaware Superior Court. Both ExxonMobil subsidiaries are Delaware corporations, and Delaware was the only state where SABIC could ensure that it obtained personal jurisdiction over them. SABIC sought declarations that: (1) the relevant provisions of the joint-venture agreements do not apply to the polyethylene technology in question; (2) ExxonMobil's overcharge allegations are time barred; and/or (3) SABIC had not overcharged the joint ventures. In early 2002, Petitioners asserted damage claims for breach of contract and "usurpation" under Saudi Arabian law as counterclaims in the Delaware action.

4.a. On August 8, 2000, Petitioners filed this case in the United States District Court for the District of New Jersey based upon, as Petitioners put it, the "identical claims" that form the basis of the Delaware action. (Pet. 20) Petitioners sought damages for SABIC's alleged breach of the joint-venture agreements.

b. SABIC moved to dismiss ExxonMobil's federal suit based on, *inter alia*, SABIC's status as a foreign sovereign commercial instrumentality entitled to immunity from suit under the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. § 1602 *et seq.* ("FSIA"). (Pet. App. 45a-46a, 49a) On April 22, 2002, SABIC filed an interlocutory appeal to the Third Circuit to challenge the district court's ruling denying SABIC immunity under the FSIA. (Pet. App. 4a) The district court stayed proceedings pending resolution of the appeal.

c. With the Third Circuit appeal pending, the parties jointly agreed to proceed to trial in the Delaware Superior Court. ExxonMobil moved to be treated as the plaintiff in the Delaware action and thus to present its damage

counterclaims first at trial. The Delaware court agreed and, after a two-week trial, a jury returned general verdicts on ExxonMobil's claims totaling $416.8 million. (Pet. App. 4a) After the Delaware Superior Court rejected SABIC's post-trial motions, the judgment became final in September 2003. On October 1, 2003, SABIC noticed its appeal to the Delaware Supreme Court. (*Id.*)

5.a. On December 9, 2003, the Third Circuit heard argument in SABIC's interlocutory appeal. Pursuant to the court's pre-argument instructions, the parties specifically addressed the question whether the Delaware final judgment stripped the federal court of jurisdiction under the *Rooker-Feldman* doctrine. During argument, the court expressly asked Petitioners' counsel to explain their continued pursuit of the federal action:

> THE COURT: But I guess you're not too unhappy so far in Delaware?
>
> MR. QUINN: So far so good. So far so good, but knock on wood, you never know, because anything could happen. We feel pretty good about it, but --
>
> THE COURT: So New Jersey is an insurance policy?
>
> MR. QUINN: In a way it is. . . .

(Tr. Oral Arg. 28-29 (docketed 12/18/03))

Petitioners' counsel also admitted that, if SABIC loses the Delaware appeal, "there really would be nothing left to do except dismiss the New Jersey case" because Petitioners "can only collect $417 million once." (Tr. Oral Arg. 27)

b. On March 24, 2004, after receiving supplemental briefing from both parties, the Third Circuit vacated the district court's decision and remanded the case "with instruction to dismiss th[e] action for lack of subject matter jurisdiction." (Pet. App. 8a) The court relied on the well-established *Rooker-Feldman* doctrine, which provides that "lower federal courts lack the power to decide claims in which 'the relief requested . . . requires determining that the

state court's decision is wrong or . . . void[ing] the state court's ruling.'" (Pet. App. 5a (citations omitted)) The Third Circuit explained that "'a claim is barred by *Rooker-Feldman* under two circumstances: first, if the claim was 'actually litigated' in state court prior to filing of the federal action or, second, if the claim is 'inextricably intertwined with [the] state adjudication.'" (*Id.* (citations omitted)) Applying this standard, the court held:

> [b]ecause ExxonMobil's federal claims were identical to the claims in which the Delaware Superior Court reached a final judgment, they are barred by the *Rooker-Feldman* doctrine. Even within our Court's narrow confines for *Rooker-Feldman*, this case is easily cabined. We cannot imagine a more classic invocation of the *Rooker-Feldman* jurisdictional bar than to preclude a party from maintaining a federal action as an "insurance policy" in case the state trial court decision in that party's favor is overturned by an appellate state court.

(Pet. App. 8a)

c. Petitioners did not seek rehearing or rehearing en banc. They filed a petition for certiorari on June 22, 2004.

REASONS FOR DENYING THE PETITION

I. PETITIONERS MISCHARACTERIZE THE NATURE AND SCOPE OF THE DECISION BELOW IN AN UNSUCCESSFUL EFFORT TO MANUFACTURE A MATERIAL CONFLICT WITH OTHER CIRCUITS

Petitioners attempt to concoct a material conflict with other circuits by offering three mischaracterizations of the decision below. *First*, Petitioners assert that the Third Circuit's decision "replaces th[e] waivable affirmative defense" of res judicata with the "nonwaivable jurisdictional bar" of the *Rooker-Feldman* doctrine. (Pet. 7) *Second*, Petitioners contend that the decision below "eviscerates the

well-established principle that concurrent jurisdiction may permit overlapping and even identical claims to proceed in parallel in state and federal courts." (*Id.*) *Third*, Petitioners claim that "the Third Circuit's reformulation of *Rooker-Feldman* promotes gamesmanship and forum shopping." (Pet. 22) None of these assertions (which were not even raised below, *see infra* Section II(B)) withstands even cursory scrutiny.

1. Turning to Petitioners' first contention, the decision below did not "transmute[] *Rooker-Feldman* into a doctrine that encompasses all claims that may fall within the scope of ordinary preclusion principles." (Pet. 9) The Third Circuit twice emphasized its "narrow view of the *Rooker-Feldman* doctrine." (Pet. App. 6a; *id.* at 8a) Indeed, the Third Circuit has expressly adopted the view that the *Rooker-Feldman* doctrine and res judicata are "distinct" and "not coextensive." *Parkview Assocs. P'ship v. City of Lebanon*, 225 F.3d 321, 328-29 (3d Cir. 2000) (citing *GASH Assocs. v. Village of Rosemont*, 995 F.2d 726, 728 (7th Cir. 1993)). In other words, if there is any split among the circuits on this issue, the Third Circuit falls squarely on the side that Petitioners assert is the "correct" side – *i.e.*, that the two doctrines are "not coextensive."[1]

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[1] Petitioners' implication that res judicata is only a waivable affirmative defense is also wrong. Indeed, this Court has recognized that federal courts may invoke res judicata *sua sponte*, even on appeal, to dismiss a federal suit. "This result is fully consistent with the policies underlying res judicata: it is not based solely on the defendant's interest in avoiding the burdens of twice defending a suit, but is also based on the avoidance of unnecessary judicial waste." *Arizona v. California*, 530 U.S. 392, 4112 (2000); *accord, e.g., Salahuddin v. Jones*, 992 F.2d 447, 449 (2d Cir. 1993); *Hutcherson v. Lauderdale County, Tenn.*, 326 F.3d 747, 756-57 (6th Cir. 2003); *Studio Art Theatre of Evansville, Inc. v. City of Evansville*, 76 F.3d 128, 130 (7th Cir. 1996); *Bechtold v. City of Rosemount*, 104 F.3d 1062, 1068 (8th Cir. 1997); *McClain v. Apodaca*, 793 F.2d 1031, 1032-33 (9th Cir. 1986); *Lowell Staats Mining Co. v. Philadelphia Elec. Co.*, 878 F.2d 1271, 1274, 1278 (10th Cir. 1989); *Stanton v. District of Columbia Court of Appeals*, 127 F.3d 72, 77 (D.C. Cir. 1997).

In this case, the Third Circuit simply held that the *Rooker-Feldman* doctrine prohibits Petitioners from maintaining a federal action that presents claims "identical" to those they litigated to final judgment in the Delaware Superior Court, especially given Petitioners' admission that they are doing so as an "insurance policy" to be pursued if, and only if, they need to challenge a Delaware Supreme Court judgment reversing the Delaware Superior Court. (Pet. App. 8a) On its face, this holding does not conflate the *Rooker-Feldman* doctrine and res judicata. Res judicata "prohibits reexamination not only of matters actually decided in the prior case, *but also those that the parties might have, but did not, assert in that action*." *Parkview Assocs.*, 225 F.3d at 329 n.2 (emphasis added).

In contrast, the Third Circuit's holding here was limited to prohibiting readjudication of "identical" claims, a result entirely consistent with this Court's view that "to sue in federal trial court in order to readjudicate the very same issues that were determined in . . . state-court proceedings below . . . would be an attempt to obtain direct review of the [state court's] decision in the lower federal courts, and would represent a partial inroad on *Rooker-Feldman*'s construction of 28 U.S.C. § 1257." *ASARCO Inc. v. Kadish*, 490 U.S. 605, 622-23 (1989). Courts of appeals on both sides of Petitioners' supposed "split" hew to the same line. *See, e.g., American Reliable Ins. Co. v. Stillwell*, 336 F.3d 311, 317 (4th Cir. 2003) ("*Rooker-Feldman* generally applies when a state-court litigant sues in federal district court to readjudicate the same issues decided in the state court proceedings."); *Kenmen Eng'g v. City of Union*, 314 F.3d

468, 473 (10th Cir. 2002) ("*Rooker-Feldman* doctrine prohibits a lower federal court from considering claims actually decided by a state court . . . ."); *Centres, Inc. v. Town of Brookfield, Wis.*, 148 F.3d 699, 703 (7th Cir. 1998) (*Rooker-Feldman* applies where federal litigant presents no "independent claim"); *Moccio v. N.Y. State Office of Court Admin.*, 95 F.3d 195, 198-99 (2d Cir. 1996) ("If the precise claims raised in a state court proceeding are raised in the subsequent federal proceeding, *Rooker-Feldman* plainly will bar the action.").

2. Equally misplaced is Petitioners' claim that the decision below "eviscerates the well-established principle that concurrent jurisdiction may permit overlapping and even identical claims to proceed in parallel" in state and federal courts. (Pet. 7) The decision below does nothing of the kind. The Third Circuit merely held that when the state court reaches a final judgment on the merits first, the federal court is *then* barred from further consideration of the identical issues, at least where the federal action is being maintained, admittedly, for the sole purpose of providing an "insurance policy" against an unfavorable judgment by a state appellate court. This is fully consistent with the principles of *Rooker-Feldman* because, were the federal district court to also proceed to a final judgment on the identical claims, its judgment would operate in effect as an appellate *de novo* review of the state court's judgment. Moreover, as a matter of both judicial efficiency and federal-state comity, it makes no sense whatsoever to have both a state and then a federal court render final judgments on identical claims between the same parties, and Petitioners themselves tellingly offer no argument to the contrary.

Hence, Petitioners' attempt (Pet. 13-14) to manufacture a split between the decision below and the Ninth Circuit's decision in *Noel v. Hall*, 341 F.3d 1148 (9th Cir. 2003), fails. Petitioners rely on *Noel* for the proposition that "*Rooker-Feldman* did not apply to prevent Noel from pursuing identical claims simultaneously in federal and pending state

proceedings." (Pet. 14) This is beside the point. The Third Circuit's decision below is entirely consistent with this holding of *Noel*. In *Noel*, there was no state court final judgment; both the federal and state proceedings were pending. *Noel*, 341 F.3d at 1165. Here, by contrast, the state court has reached a final judgment on the identical claims that Petitioners are pursuing in their federal action.[2]

Petitioners' attempt to manufacture a split with the Fourth Circuit's decision in *Vulcan Chemical Technologies, Inc. v. Barker*, 297 F.3d 332 (4th Cir. 2002), on the permissibility of "parallel" state and federal litigation, is likewise futile. In *Vulcan*, the court did "*not reach* [the] *Rooker-Feldman* argument." *Id.* at 338 (emphasis added). Instead, stressing the "unusual circumstances of th[e] case, in which a state court had entered judgment on the exact issue to be considered by the federal court before the federal court had even heard argument in the case," the Fourth Circuit dismissed the federal suit under the *Colorado River* abstention doctrine. *Id.* at 343-44. Indeed, to the extent that *Vulcan* is instructive at all, it begs the question why Petitioners are complaining about dismissal of their federal action. Petitioners concede (Pet. 21) that their case "likely" should be dismissed on abstention grounds – a result that would accord with *Vulcan*. Petitioners offer no explanation why this Court should review a case dismissed on *Rooker-Feldman* grounds that they concede could have as easily been dismissed on abstention grounds.

3. Lastly, Petitioners argue that "the Third Circuit's reformulation of *Rooker-Feldman* promotes gamesmanship and forum shopping." (Pet. 22) As they see it, "[a] defendant who is sued in federal district court in the Third

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[2] Petitioners concede that "the fact that the Delaware trial court's decision is pending on appeal" does not prohibit application of the *Rooker-Feldman* doctrine. (Pet. 18)

Circuit – or any circuit that adopts the Third Circuit's *Rooker-Feldman* approach – can now defeat federal jurisdiction simply by filing a suit (*e.g.*, a declaratory judgment action) raising identical issues in state court." (*Id.* (footnote omitted)) This argument is absurd. For one thing, it ignores Petitioners' own "gamesmanship" in maintaining this federal action as an "insurance policy" in the event that they are moved to challenge an adverse judgment by the Delaware Supreme Court. A clearer case of forum shopping is difficult to imagine. For another, it ignores the fact that the mere filing of a federal action does not eliminate jurisdiction under the decision below; only a state-court final judgment does, at least where the federal action is admittedly intended only to serve as an "insurance policy" against a state appellate court's reversal of a favorable judgment.

II. THIS CASE IS A POOR VEHICLE FOR EXPLORING WHATEVER DISTINCTIONS MAY EXIST BETWEEN THE *ROOKER-FELDMAN* DOCTRINE AND RES JUDICATA PRINCIPLES

A. The Third Circuit's Decision Was Narrow, Factbound, And Entirely Consistent With The *Rooker-Feldman* Doctrine

As explained above, Petitioners have presented a highly exaggerated and misleading picture of what the Third Circuit really held in this case. In fact, they ultimately admit (Pet. 17-18) that their complaint boils down to a disagreement with the way the Third Circuit applied the *Rooker-Feldman* doctrine on a set of unusual facts. But this Court does not grant certiorari to resolve factbound applications of legal standards. *See, e.g.*, *Packwood v. Senate Select Comm. on Ethics*, 510 U.S. 1319, 1320-21 (1994); *Izumi Seimitsu Kogyo Kabushiki Kaisha v. U.S. Philips Corp.*, 510 U.S. 27, 34 (1993). No exception is warranted here.

The Third Circuit's decision is on its face a narrow, factbound application of the *Rooker-Feldman* doctrine. As the Third Circuit noted, Petitioners' federal action does not

present claims that are merely similar, or related, to claims they have pursued to final judgment in Delaware: "[T]here is no dispute that [Petitioners'] claims are *identical to* the claims upon which the Delaware Superior Court reached a final judgment." (Pet. App. 6a (emphasis added)) Moreover, Petitioners admitted at oral argument (though this admission is tellingly absent from their petition) that they seek "to maintain [their] federal action as an '*insurance policy*' in order to relitigate the overcharge issue if SABIC prevails in its efforts to overturn the state court verdict . . . ." (Pet. App. 8a (emphasis added)) In other words, Petitioners' avowed and *only* purpose for maintaining their federal action is as a vehicle to overturn any adverse judgment that the Delaware Supreme Court might issue.

On these unusual facts, which are unlikely to recur with any frequency, the Third Circuit's decision to employ the *Rooker-Feldman* doctrine to stop Petitioners from gaming the system is unremarkable. In fact, in the only other case presenting similar facts, the Fourth Circuit reached precisely the same result. In *American Reliable Insurance Co. v. Stillwell*, 336 F.3d 311 (4th Cir. 2003) – a case that Petitioners themselves cite as a correct application of the *Rooker-Feldman* doctrine (Pet. 22) – a party "prepar[ed] a complaint raising claims identical to those in state court . . . and fil[ed] it immediately prior to the state court decision in preparation for an adverse determination." *Id.* at 318. The party also admitted that it intended "to let the federal complaint sit . . . while awaiting the state-court decision and to pursue it only if [it] lost in state court." *Id.* (internal quotation marks omitted). The Fourth Circuit rejected this "ploy" to "nullify the purpose of [the] *Rooker-Feldman*" doctrine. *Id.* "[A] party cannot avoid *Rooker-Feldman* . . . where it is patently obvious, as it was here, that the federal action is intended to be nothing more than an appeal of an unfavorable decision by the state court." *Id.* at 319. As the Fourth Circuit put it, barring the federal action was

"consistent with the spirit of the *Rooker-Feldman* doctrine," which "elevat[es] substance over form." *Id.*

The substance and spirit of the *Rooker-Feldman* doctrine manifestly are not served by allowing Petitioners to clog the federal court system with a suit they admit will go forward only if they are moved to attack an adverse state-court judgment. Faced with these unusual (and probably non-recurrent) facts the Third Circuit reached an entirely understandable and correct result.

B. Petitioners Did Not Raise Below, And The Third Circuit Did Not Consider, The Question Presented In The Petition

Before the Third Circuit, Petitioners raised only two issues with respect to the *Rooker-Feldman* doctrine's applicability to their federal action. Neither was the question presented in their petition.

First, Petitioners argued that the *Rooker-Feldman* doctrine did not apply because they filed their federal action before they filed "identical claims" as counterclaims in the Delaware Superior Court. (Pet. App. 6a) The Third Circuit correctly rejected this argument, stating that the "only timing relevant is whether the state judgment precedes a federal judgment" and it is "the substance of the state court's judgment compared to the plaintiff's claims in the federal action" that determines *Rooker-Feldman*'s applicability. (*Id.*) Petitioners do not take issue with the Third Circuit's rejection of their argument on this issue.

Second, Petitioners argued that ExxonMobil (the parent corporation) was not, in fact, a party to the Delaware litigation, whose counterclaims were brought by two of ExxonMobil's wholly-owned subsidiaries. The Third Circuit rejected this claim on the grounds that the "common sense privity principle" and "the fact that ExxonMobil's interest in its federal claims is identical to its subsidiaries' interest in their state court claims" meant that ExxonMobil was a party to the Delaware action. (Pet. App. 7a-8a) Petitioners have

not challenged the Third Circuit's resolution of this issue against them, either.

Below, Petitioners did not so much as hint at their present position that application of the *Rooker-Feldman* doctrine to bar their "insurance policy" federal action would improperly conflate that doctrine with res judicata. Nor, after the Third Circuit issued its decision, did Petitioners file a petition for rehearing or suggestion of rehearing en banc raising this question. Having not raised their question presented in the court below, Petitioners cannot properly raise it here. This Court does "not decide in the first instance issues not decided below." *National Collegiate Athletic Ass'n v. Smith*, 525 U.S. 459, 470 (1999); *accord, e.g., Glover v. United States*, 531 U.S. 198, 205 (2001).

C. Whether Decided On *Rooker-Feldman* Grounds Or On Res Judicata Grounds, Petitioners "Insurance Policy" Federal Action Is Barred

This case is a poor vehicle for exploring the differences between the *Rooker-Feldman* doctrine and res judicata principles for yet another reason: The outcome of this case would be the same under either analysis.

Petitioners as much as concede this point in arguing that the Third Circuit's analysis tracked precisely the application of Delaware res judicata law. (*See* Pet. 7, 9, & 20 n.4) As discussed above (*see supra* pp. 6-8), this is a mischaracterization of the decision below. But Petitioners are correct that, had the Third Circuit analyzed this case under Delaware res judicata law, it would have reached the same result. Delaware's res judicata doctrine "precludes a second attempt to litigate the same 'cause of action.'" *Hughes v. Trans World Airlines, Inc.*, 336 A.2d 572, 574 (Del. 1975); *accord, e.g., Ezzes v. Ackerman*, 234 A.2d 444, 445 (Del. 1967) ("[A] judgment entered either after trial on the merits or upon an approved settlement is res judicata and bars subsequent suit on the same claim . . . ."). Moreover, even a "judgment being appealed will support the application

of . . . res judicata." *Maldonado v. Flynn*, 417 A.2d 378, 384 (Del. Ch. 1980); *accord, e.g., Playtex Family Prods., Inc. v. St. Paul Surplus Lines Ins. Co.*, 564 A.2d 681, 684 n.2 (Del. Super. Ct. 1989); *Restatement (Second) of Judgments* § 13 cmt. f (1982). *See generally* 28 U.S.C. § 1738 (state "judicial proceedings . . . shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such State . . . from which they are taken").

Thus, because Petitioners' suit is not only barred under the *Rooker-Feldman* doctrine, but is also presently precluded under elementary principles of Delaware res judicata law, it is a poor vehicle for teasing out any distinctions that may exist between the two. Indeed, it is mystifying that Petitioners would seek to challenge the Third Circuit's *Rooker-Feldman*-based dismissal, which, like all subject-matter jurisdiction dismissals, is without prejudice. *See* 2 *Moore's Federal Practice* § 12.30[2] (3d ed.). The alternative is a res judicata dismissal on the merits with prejudice, which "*bars* further claims by parties or their privies on the same cause of action." *United States v. Mendoza*, 464 U.S. 154, 158 n.3 (1984) (emphasis added). *See also supra* p. 6 n.1.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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